Office - Supreme Court, U.S.
FILED
APR 2 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1587

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1983

NAARTEX CONSULTING CORPORATION,

*Petitioner,*

v.

WILLIAM J. CLARK, SECRETARY OF THE INTERIOR, *et al.*,

*Respondents.*

On Petition for a Writ of Certiorari
To The United States Court of Appeals
For the District of Columbia Circuit

## BRIEF OF CERTAIN PRIVATE RESPONDENTS IN OPPOSITION

C. Michael Buxton
(Counsel of Record)
Charles D. Tetrault
Vinson & Elkins
1101 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 862-6500

(Respondents and Additional Counsel Listed Inside)

April 2, 1984

DiCesare and Associates Printing • Washington, D.C. • (202) 331-8101

## QUESTION PRESENTED

Whether, in an action involving a challenge to a single federal oil and gas lease brought more than four years after the award of that lease, the Court of Appeals correctly affirmed the order of the District Court (which had dismissed the action for numerous reasons) on the grounds that:

1) personal jurisdiction over the private defendants was lacking;
2) the private defendants were indispensable parties;
3) venue was improper;
4) no private right of action exists under the Mineral Lands Leasing Act;

5) petitioner's amended complaint failed to allege the elements necessary to establish a claim for common law fraud; and

6) petitioner's claims violate the federal anti-assignment laws. 1/

---

1/ The parties in the Court of Appeals are listed in the Petition at ii-iii. However, respondents note that (1) William J. Clark has succeeded James G. Watt as the Secretary of the Interior and is automatically substituted as a party (see Rule 40.3) and (2) Russell Huff was not an intervenor. Mr. Huff's motion to intervene was denied by the District Court, and Mr. Huff did not file an appeal from that denial.

Respondents also note that 31 U.S.C. § 203 (1976) cited in the Petition at 5, has been recodified as 31 U.S.C. § 3727 (1983). The pertinent portions of section 3727 are set forth in the Appendix to this brief.

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES..... iv

LISTING OF CORPORATE AFFILIATES... vi

COUNTERSTATEMENT OF THE CASE..... 2

REASONS FOR DENYING THE WRIT..... 4

I. RESOLUTION OF THE ISSUES PRESENTED IN THE PETITION WOULD NOT AFFECT THE OUTCOME OF THIS CASE..... 4

II. THE DECISION BELOW PRESENTS NO SUBSTANTIAL QUESTION OF NATIONAL IMPORTANCE..... 7

III. THE DECISION BELOW IS CORRECT..... 9

A. There is No Private Right of Action Under the Mineral Lands Leasing Act..... 9

B. The Court of Appeals Properly Disposed of Naartex's Common Law Fraud Arguments..... 12

C. The Huff-Naartex Assignment Violates the Anti-Assignment Laws..... 14

CONCLUSION..... 15

APPENDIX..... 1a

TABLE OF AUTHORITIES

CASES: Page

Naartex Consulting Corp. v. Watt, et al., No. 82-1979..... 2

National Railroad Passenger Corporation (Amtrak) v. National Association of Railroad Passengers, 444 U.S. 453 (1974)..... 10-11

Page v. Comert, 243 F.2d 245 (D.C. Cir. 1957)..... 14

Pullman v. Chorney, 712 F.2d 447 (10th Cir. 1983)..... 12

SEC v. Capital Gains Research Bureau, 375 U.S. 180 (1963)..... 14

Transamerica Mortgage Advisors Inc. v. Lewis, 444 U.S. 11 (1979). 9 11

United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966).... 13

**STATUTES:**

30 U.S.C. §§ 181-287 (1976)..... 2, 5

30 U.S.C. § 184(h)(1) (1976)..... 10

30 U.S.C. § 226(c) (1976)..... 11

31 U.S.C. § 203 (1976)..... ii

31 U.S.C. § 3727 (1983).... ii, 5, 14

41 U.S.C. § 15 (1976)..... 5, 14, 15

45 U.S.C. § 547(a) (1976)..... 11

**REGULATIONS AND RULES:**

43 C.F.R. §§ 3112.1-1, *et seq.* (1983)..... 7-8

Supreme Court Rule 40.3..... ii

LISTING OF CORPORATE AFFILIATES

In accordance with Rule 28.1, set forth in the following footnote is a list naming all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates of each corporation on whose behalf this brief in opposition is filed. 2/

---

2/ American Natural Resources Company and Michigan Wisconsin Pipe Line Company.

American Natural Resources Company and Michigan Wisconsin Pipe Line Company are affiliated companies. Since the time of the institution of this action, Michigan Wisconsin Pipe Line Company has been renamed ANR Pipeline Company. Other affiliated companies are American Natural Resources International Finance, NV, ANR Technology Company, ANR Gathering Company, ANR Media Company, ANR Information Systems Company, American Natural Alaskan Company, American Natural Arctic Company, (Footnote Continued)

(Footnote Continued)
ANR Production Company, ANR Storage Company, ANRPS Holdings, Inc., ANR Coal Company, ANG Coal Gasification Company, ANR Gasification Properties Company, and Great Lakes Gas Transmission Company.

Davis Oil Company: None

General American Oil Company of Texas

General American Oils, Ltd.; General American Pipe Line Company; General Pipeliner Inc.; GAO Canada Ltd.; GAO England Ltd.; GAO North Sea Exploration Ltd.; GAO North Sea Ltd.; GAO (UK) Limited; Excalibur Oil Company (U.K.) Limited; Excalibur Oil Corporation; Meadows Building Corporation; Meadows Building Services, Inc. and Phillips Petroleum Company.

Paul Messinger & Company: None

Panhandle Western Gas Company
Panhandle Eastern Corporation (Parent).

Reading & Bates Petroleum Co.
Reading & Bates Corporation (Parent); Resources Conservation
(Footnote Continued)

(Footnote Continued)
Co., a joint venture between Reading & Bates Development Co. and Boeing Environmental Products, Inc.; and Sovolco, a joint venture between Reading & Bates Corporation and the Boeing Company.

Southland Royalty Company

Southland Royalty Company ("Southland") does not have any parents, subsidiaries or affiliates. However, solely to aid this Court in considering all conceivable reasons for recusal, Southland notes that in 1980, it assigned certain net overriding royalty interests to two royalty trusts and that units of beneficial interest in the trusts were distributed to Southland's shareholders of record at that time. The two trusts are: the Permian Basin Royalty Trust and the San Juan Basin Royalty Trust.

No. 83-1587

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NAARTEX CONSULTING CORPORATION,

Petitioner,

v.

WILLIAM J. CLARK, SECRETARY OF THE INTERIOR, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The District of Columbia Circuit

# BRIEF OF CERTAIN PRIVATE RESPONDENTS IN OPPOSITION

Respondents submit this brief in opposition to the petition for a writ of certiorari filed by Naartex Consulting

Corporation ("Naartex") to review the November 29, 1983 opinion of the United States Court of Appeals for the District of Columbia Circuit in Naartex Consulting Corp. v. Watt, et al., No. 82-1979.

## COUNTERSTATEMENT OF THE CASE

This action involves a series of challenges to the award of a single federal oil and gas lease issued in 1975 by the Secretary of the Interior pursuant to the simultaneous oil and gas leasing program, which he administers pursuant to the Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181-287 (1976). Naartex and an affiliated company, Geosearch, Inc., both of which

are in the business of buying unsuccessful lease applications and protesting the issuance of public land leases, filed the challenges more than four years after the award of the lease in question and more than two years after that lease began producing oil. The background of this case and those challenges is concisely set forth in the opinion of the Court of Appeals. Petr. App. A-4--A-18.

## REASONS FOR DENYING THE WRIT

### I. RESOLUTION OF THE ISSUES PRESENTED IN THE PETITION WOULD NOT AFFECT THE OUTCOME OF THIS CASE.

The unanimous and comprehensive opinion of the Court of Appeals rejected petitioner's arguments for a variety of separate and independent reasons. Even if this Court were to consider the three questions presented by the petition to be worthy of plenary review -- which they clearly are not -- numerous other grounds still would exist to uphold the decision below.

The District Court dismissed the action on the separate and independent grounds that: (1) it lacked personal jurisdiction over the private defendants (i.e., respondents in this Court);

(2) venue did not lie in the District of Columbia; (3) the private defendants were indispensable parties to the action; (4) the Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181-287 (1976), creates no private right of action; (5) the anti-assignment laws, 31 U.S.C. § 3727 (1983) and 41 U.S.C. § 15 (1976), bar Naartex from asserting Russell Huff's claims against the government; (6) Mr. Huff's joinder or intervention was inappropriate because of his failure to challenge the issuance of the lease in a timely manner, and because intervention should not be employed to cure an otherwise futile action; and (7) Naartex and Mr. Huff both lacked standing to challenge the issuance of the lease. The Court of

Appeals affirmed for virtually the same reasons. Thus, in view of the many independent grounds for the decision below, resolution by this Court of the questions presented in the petition would in no way affect the result in this case.

## II. THE DECISION BELOW PRESENTS NO SUBSTANTIAL QUESTION OF NATIONAL IMPORTANCE.

In the three sentences it devotes to the subject, Petition 21-22, petitioner fails to demonstrate how this case involves important questions of federal law that should be decided by this Court. No issue of national importance is presented by petitioner's untimely and meritless challenge to a single federal oil and gas lease. The decision below in no way affects the operation of the simultaneous oil and gas leasing program, a comprehensive regulatory program administered by the federal government (see 43 C.F.R.

§§ 3112.1-1 through 3112.7 (1983)). 3/ Contrary to Naartex's suggestion (Petition 22), the decisions below do not "effectively foreclose[] the availability of a meaningful remedy to applicants for federal oil and gas leases", but instead simply enforce the requirement that challenges regarding federal leases be made in a timely manner and in the appropriate forum.

---

3/ This is highlighted by the Secretary of the Interior's consistent opposition to Naartex's action and by the brief in opposition that we understand that the Solicitor General will file on the Secretary's behalf.

## III. THE DECISION BELOW IS CORRECT.

The unanimous opinion of the Court of Appeals thoroughly examined and rejected each of petitioner's arguments. That opinion is correct, and respondents rely on it here.

### A. There is No Private Right of Action Under the Mineral Lands Leasing Act.

Legislative intent is the dispositive factor in determining whether an implied private right of action exists under a federal statute. Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 24 (1979). The Court of Appeals properly concluded that Congress did not express any intention in the Mineral Lands Leasing Act to create a private right of action to enforce

compliance with the Department of the Interior's regulatory requirements concerning oil and gas leasing on federal lands. In its examination of the Congressional intent, Petr. App. A-43--A-50, the Court pointed to section 27 of the Act, which expressly provides that, if any lease is held in violation of the provisions of the Act, the lease may be cancelled only through an "appropriate proceeding instituted by the Attorney General." 30 U.S.C. § 184(h)(1) (1976). "[W]hen legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies." National Railroad Passenger Corporation (Amtrak) v. National Association of Railroad

Passengers, 414 U.S. 453, 458 (1974) (no private right of action under Section 307 of the Amtrak Act, 45 U.S.C. § 547(a) (1976), which authorized the Attorney General to petition federal courts for equitable relief to prevent a violation of that act). See also Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. at 19. In view of the legislatively created scheme for governmental enforcement of the Act, the Court of Appeals clearly was correct when it held that no private right of action exists. For very similar reasons, the United States Court of Appeals for the Tenth Circuit also has ruled that no private right of action exists under the Mineral Lands Leasing

Act. Pullman v. Chorney, 712 F.2d 447, 449-450 (10th Cir. 1983). 4/

B. The Court of Appeals Properly Disposed of Naartex's Common Law Fraud Arguments.

The Court of Appeals thoroughly dissected Naartex's alleged common law fraud claims and found them totally wanting. Petr. App. A-50--A-64. Central to each count of Naartex's amended complaint was one or more alleged violations of the Mineral Lands

---

4/ Contrary to petitioner's suggestion (Petition 39-40), the government will not "lose millions of dollars in uncollected royalties" in the absence of a private right of action. The government receives a one-eighth royalty in amount or value of any oil and gas produced regardless of the number or identity of those holding interests in the lease. 30 U.S.C. § 226(c) (1976).

Leasing Act. Thus, Naartex failed to make clear that it even was trying to present a common law fraud claim. Moreover, even if the claim had been adequately presented, the Court of Appeals correctly held (Petr. App. A-55--A-64) that the District Court could have properly dismissed the claim because (1) dismissal of pendent state claims is appropriate where all federal claims previously had been dismissed, see United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966); (2) Naartex had not established an independent jurisdictional basis because of its failure to allege diversity of citizenship; and (3) Naartex did not allege all the elements necessary to establish common law fraud, see, e.g.,

SEC v. Capital Gains Research Bureau, 375 U.S. 180, 192 (1963); Page v. Comert, 243 F.2d 245 (D.C. Cir. 1957).

C. The Huff-Naartex Assignment Violates the Anti-Assignment Laws.

The Court of Appeals correctly ruled that the assignment from Mr. Huff to Naartex is a classic violation of the federal anti-assignment laws, 31 U.S.C. § 3727 (1983) and 41 U.S.C. § 15 (1976). Petr. App. A-65--A-74. Mr. Huff, not Naartex, participated in the oil lease lottery. Yet Naartex purports to assert the rights of Mr. Huff. Section 3727 states that "a transfer or assignment of any part of a claim against the United States Government or of an interest in the claim" can be made "only after [the] claim is allowed, the amount of the

claim decided, and a warrant for payment of the claim has been issued." In addition, such assignments "must be attested to by 2 witnesses." Here, no claim has been allowed, no amount has been decided, no warrant has been issued, and the purported assignment was not witnessed as required by the statute. Likewise, the assignment also violated the express prohibition of 41 U.S.C. § 15 (1976) which provides that "[n]o contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party . . .."

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

C. Michael Buxton
(Counsel of Record)
Charles D. Tetrault
Vinson & Elkins
1101 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 862-6500

Attorneys for American Natural Resources Company, Michigan Wisconsin Pipe Line Company, and Southland Royalty Company

Jerome C. Muys
John F. Shepherd
(Counsel of Record)
Holland & Hart
Suite 1200
1875 Eye Street, N.W.
Washington, D.C. 20006
(202) 466-7340

Attorneys for Davis Oil Company and Paul Messinger & Company

Peter D. Dickson
(Counsel of Record)
Van Ness, Feldman,
Stucliffe, Curtis
& Levenberg
1050 Thomas Jefferson St.
Washington, D.C. 20007
(202) 331-9400

Laura L. Payne
Poulson, Odell & Peterson
1776 Lincoln Street
Suite 1000
Denver, Colorado 80203
(303) 861-4400

Attorneys for General American Oil Company of Texas

Thomas P. Humphrey
(Counsel of Record)
Davis, Graham & Stubbs
1001 22nd Street, N.W.
Suite 500
Washington, D.C. 20037
(202) 822-8660

Attorney for James S. Harrell

C. Michael Buxton
(Counsel of Record)
Vinson & Elkins
1101 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 862-6500

C. Scott Crabtree
Cogswell and Wehrle
1910 Lincoln Center Bldg.
1660 Lincoln Street
Denver, Colorado 80164
(303) 861-2150

Attorneys for Gordon L. Heele, Marlis E. Smith, Trustee and Marlis E. Smith Trust

Raymond N. Shibley
(Counsel of Record)
Brian D. O'Neill
Daniel J. Conway
LeBoeuf, Lamb, Leiby &
MacRae
1333 New Hampshire Ave.,N.W.
Washington, D.C. 20036
(202) 457-7500

Attorneys for Panhandle
Western Gas Company

Dickson M. Saunders
(Counsel of Record)
William C. Anderson
Doerner, Stuart, Saunders,
Daniel & Anderson
1200 Atlas Life Bldg.
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Reading &
Bates Petroleum Co.

Richard G. Morgan
Charles W. Garrison III
(Counsel of Record)
O'Connor & Hannan
1919 Pennsylvania Ave.,N.W.
Washington, D.C. 20006
(202) 887-1400

Attorneys for Raymond G.
Albrecht

April 2, 1984

APPENDIX

31 U.S.C. § 3727(a)-(b) (1983):

(a) In this section, "assignment" means --

(1) a transfer or assignment of any part of a claim against the United States Government or of an interest in the claim; or

(2) the authorization to receive payment for any part of the claim.

(b) An assignment may be made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued. The assignment shall specify the warrant, must be

made freely, and must be attested to by 2 witnesses. The person making the assignment shall acknowledge it before an official who may acknowledge a deed, and the official shall certify the assignment. The certificate shall state that the official completely explained the assignment when it was acknowledged. An assignment under this subsection is valid for any purpose.